BILL NO. S-84-11-42

SPECIAL ORDINANCE NO. S-164-84

ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE TO ISSUE ITS "CITY OF FORT WAYNE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 1984 (WILHELM REAL ESTATE CORP. PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THEREOF

WHEREAS, the Fort Wayne Economic Development Commission has rendered its Project Report for the Wilhelm Real Estate Corp. regarding the financing of proposed economic development facilities under construction or to be constructed in the City of Fort Wayne, Indiana, and the Fort Wayne Plan Commission has commented favorably thereon; and

WHEREAS, the Fort Wayne Economic Development Commission conducted a public hearing on December 6, 1984, and also adopted a resolution on December 6, 1984, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities for Wilhelm Real Estate Corp. for lease to Lincolnway International Trucks, Inc. complies with the purposes and provisions of I.C. 36-7-12 and that such financing will be of benefit to the health and welfare of the City of Fort Wayne and its citizens; and

WHEREAS, the Fort Wayne Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive impact and has specifically found and this Common Council finds: That the Project includes acquisition of real estate and construction of a commercial truck facility together with acquisition of machinery and equipment and that there are no existing facilities of the size and type of the Project in the general area of the Project that meet the needs of the Lessee and no one spoke in opposition to the Project; and the Commission has approved the forms of and has transmitted for approval by the Common Council the Loan Agreement, Mortgage and Indenture of Trust, Note, Bond, Lease, Conditional Assignment of

Lease and Rentals, Lessee's Consent and Agreement to Lease Assignment and Guaranty Agreement; now therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA THAT:

SECTION 1. It is hereby found that the financing of the economic development facilities referred to in the Loan Agreement and Mortgage and Indenture of Trust approved by the Fort Wayne Economic Development Commission and presented to this Common Council, the issuance and sale of the revenue bonds in the aggregate principal amount of not to exceed $1,355,000 the loan of the proceeds of the revenue bonds to Wilhelm Real Estate Corp. for the acquisition and construction of such facilities for lease to Lincolnway International Trucks, Inc., under the Lease, the payment of the revenue bonds by the note payment of Wilhelm Real Estate Corp. under the Loan Agreement, and Note and the securing of said bonds by the mortgaging of such facilities to the Issuer under the Mortgage and Indenture of Trust complies with the purposes and provisions of I.C. 36-7-12 and will be of benefit to the health and welfare of the City of Fort Wayne and its citizens.

SECTION 2. The facilities will consist of acquisition of real estate and construction of a building, including equipment and machinery located at 2817 Goshen Road, Fort Wayne, Indiana.

SECTION 3. It is hereby found that the above-described Project of Wilhelm Real Estate Corp. for lease to Lincolnway International Trucks, Inc. will not have an adverse competitive impact on other facilities of the same kind already operating in the same market area, and will contribute significantly to the creation of permanent new job opportunities.

SECTION 4. The substantially final forms of the Loan Agreement, Mortgage and Indenture of Trust, Note and

Bond, approved by the Fort Wayne Economic Development Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in I.C. 36-7-12, and the substantially final forms of Lease, Conditional Assignment of Lease and Rentals, Lessee's Consents and Agreement to Lease Assignment and Guaranty Agreement by the Fort Wayne Economic Development Commission are hereby approved, and all such documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of all such documents are on file in the office of the Clerk for public inspection.

SECTION 5. The City of Fort Wayne shall issue its Economic Development Revenue Bonds, (Wilhelm Real Estate Corp. Project), in the total principal amount of not to exceed One Million Three Hundred Fifty Five Thousand Dollars ($1,355,000) and with the final maturity December 1, 1999 from the date of issuance for the purpose of procuring funds to lend to Wilhelm Real Estate Corp. to pay the costs of acquisition and construction of the economic development facilities as more particularly set out in the Loan Agreement and Mortgage and Indenture of Trust incorporated herein by reference, which bonds will be payable as to principal, premium, if any, and interest from the note payments made by Wilhelm Real Estate Corp. under the Loan Agreement, and Note or as otherwise provided in the above described Mortgage and Indenture of Trust. The bonds shall be issued in fully registered form in the denominations of $5,000 or integral multiples thereof and shall be redeemed as provided in Article III of the Mortgage and Indenture of Trust. Payments of principal and interest are payable in lawful money of the United States of America at the principal office of the Trustee or its successor in trust or

by check or draft mailed or delivered to the registered owner as provided in the Mortgage and Indenture of Trust. The bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Fort Wayne or the State of Indiana nor are the bonds payable in any manner from revenues raised by taxation.

SECTION 6. The Mayor and Clerk are authorized and directed to sell such bonds to the purchaser thereon at the rate per annum equal to 70% of the national prime commercial lending rate as quoted daily in the Wall Street Journal, such rate to be adjusted daily to reflect any change in said rate as quoted by the Wall Street Journal. In the event of a Determination of Taxability (as defined), the bonds shall bear interest at the Taxable Rate (as defined). The bonds shall be sold at a price not less than 100% of the principal amount thereof.

SECTION 7. The Mayor and Clerk are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the bonds authorized herein. The Mayor and Clerk are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this Ordinance with the review and advice of the City Attorney; it being the express understanding of this Common Council that said Financing Agreement is in substantially final form as of the date of this Ordinance. The approval of said modifications or additions shall be conslusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided,

however, that no such modification or addition shall increase the maximum principal amount of, interest rate on or term of the bonds as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk on the bonds may be either manual or facsimile signatures. The Clerk is authorized to arrange for delivery of such bonds to the Trustee named in the Mortgage and Indenture of Trust, payment for the bonds will be made to the Trustee named in the Mortgage and Indenture of Trust and after such payment the bonds will be delivered by the Trustee to the purchasers tthereof. The Mayor and Clerk shall execute and the Clerk shall deliver the bonds to the Trustee within ninety days of the adoption of this Ordinance. The bonds shall be dated as of December 1, 1984.

SECTION 8. The provisions of this Ordinance and the Mortgage and Indenture of Trust securing the bonds shall constitute a contract binding between the City of Fort Wayne and the holder of the Economic Development Revenue Bonds, (Wilhelm Real Estate Corp. Project), and after the issuance of said bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said bonds or the interest thereon remains unpaid.

SECTION 9. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Mark E. Giaquinta

Councilmember

ADOPTED BY ECONOMIC DEVELOPMENT COMMISSION
AND APPROVED AS TO FORM.

John J. Wernet, Attorney for the
Economic Development Commission
Dated this 26th day of Nov, 1984

APPROVED AS TO FORM AND LEGALITY.

Bruce O. Boxberger, City Attorney
Dated this 26th day of Nov, 1984

Read the first time in full and on motion by GiaQuinta, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, ~~City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____.M.,E.S.

DATE: 11-27-84

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by GiaQuinta, seconded by Stier, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

| | AYES | NAYS | ABSTAINED | ABSENT | TO-WIT: |
|---|---|---|---|---|---|
| TOTAL VOTES | 9 | | | | |
| BRADBURY | ✓ | | | | |
| BURNS | ✓ | | | | |
| EISBART | ✓ | | | | |
| GiaQUINTA | ✓ | | | | |
| HENRY | ✓ | | | | |
| REDD | ✓ | | | | |
| SCHMIDT | ✓ | | | | |
| STIER | ✓ | | | | |
| TALARICO | ✓ | | | | |

DATE: 12-11-84

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE ~~(RESOLUTION)~~ NO. G-164-84 on the 11th day of December, 19 84,

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)
Ray A Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of December, 1984, at the hour of 11:30 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 12 day of December, 19 84, at the hour of 2:00 o'clock P.M.,E.S.T.

WIN MOSES, JR., MAYOR

BILL NO. S-84-11-42

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE TO ISSUE ITS "CITY OF FORT WAYNE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 1984 (WILHELM REAL ESTATE CORP. PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THEREOF

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

MARK E. GiaQUINTA, CHAIRMAN

JAMES S. STIER, VICE CHAIRMAN

JANET G. BRADBURY

THOMAS C. HENRY

DONALD J. SCHMIDT

CONCURRED IN 12-11-84
SANDRA E. KENNEDY, CITY CLERK